

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—COMMERCE-JUSTICE-  
SCIENCE

TRANSPORTATION-HUD

CO-CHAIR—TOM LANTOS  
HUMAN RIGHTS COMMISSION



**Congress of the United States**  
**House of Representatives**

August 4, 2009

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(202) 225-5136

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(800) 945-9653 (IN STATE)

110 NORTH CAMERON STREET  
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(540) 667-0990  
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wolf.house.gov

General Eric Shinseki  
Secretary  
Department of Veterans Affairs  
Washington DC 20405

Dear General Shinseki:

Last year, I worked with your predecessor, former Secretary James Peake, to correct a critical flaw in the implementation in the Department of Veterans Affairs (VA) "Flexiplace" telework program. I was troubled to learn from a recent letter from the National Veterans Affairs Council (enclosed), as well as individually from several career employees, that telework policies remain inconsistent throughout the VA.

As you will read in the enclosed correspondence with former Secretary Peake last year, it came to my attention that managers in the department's Board of Veteran Appeals (BVA) were requiring employees participating in the Flexiplace program to complete an extra 140 hours work per year -- nearly one month's additional work -- more than their colleagues who did not telework. This was a flawed and inexcusable interpretation of federal telework law, which I authored nearly a decade ago.

After several months of discussions, Secretary Peake directed BVA to revise Flexiplace program requirements for fiscal year 2009 and end this arbitrary and unfair burden for teleworkers. As a result, I have learned that Flexiplace participation has grown nearly 30 percent in BVA this year -- an important increase in telework participation for the VA, which has historically failed to meet telework targets.

I ask for your support in correcting outstanding telework issues in the department's Veterans Benefits Administration (VBA) Regional Offices (RO). I would urge you to carefully review the enclosed correspondence and review Flexiplace implementation throughout the entire department to address these discrepancies.

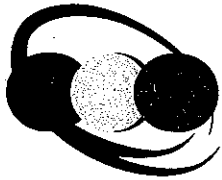
Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 for additional information.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

Cc: OPM Director John Berry



Out of Many/One Union  
AFGE NVAC/AFL-CIO

## NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees  
AFFILIATED WITH THE AFL-CIO

ALMA L. LEE  
President

July 20, 2009

The Honorable Frank R. Wolf  
United States House of Representatives  
Washington, DC 20515-4610

RE: Telework policies at the Veterans Benefits Administration

Dear Congressman Wolf:

The American Federation of Government Employees/National Veterans Affairs Council greatly appreciates your efforts last year to eliminate unfair telework policies for federal employees working at the Department of Veterans Affairs (VA) Board of Veterans Appeals. As a result of your leadership on this issue, including your July 30, 2008 letter to then VA Secretary Peake, the VA agreed to reverse arbitrary and unfair production standards that required attorneys participating in the Flexiplace telework program to complete more work credits than their colleagues working at the office.

I am also writing at this time to ask for your assistance in opposing a similar anti-telework policy being imposed on employees processing disability claims at the VA's Veterans Benefits Administration (VBA) Regional Offices (RO). Our recent survey of ROs indicate that some ROs do not offer Flexiplace, while others only offer it to employees working in certain positions. Nearly every office that does offer Flexiplace imposes significantly higher production standards on Flexiplace participants.

We were delighted to hear OPM's new director, John Berry, recently issued such a strong endorsement of the telework policies you have spearheaded. We thank you for considering our request to eliminate counterproductive VA policies that discourage telework among the growing number of dedicated VA employees already under great pressure to process a rapidly growing number of veterans' disability claims, especially in the face of a VBA backlog approaching one million claims.

Should you need additional information, please contact our VA lobbyist Marilyn Park at 202-639-6456. Thank you again.

Sincerely and In Solidarity,

Alma L. Lee  
President  
National Veterans Affairs Council, #53  
American Federation of Government Employees, AFL-CIO

ALL/mws

JUL 20 2009  
JUL 28 2009

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER—STATE-FOREIGN  
OPERATIONS

TRANSPORTATION-HUD

CO-CHAIR—CONGRESSIONAL  
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**Congress of the United States**  
**House of Representatives**  
July 30, 2008

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wolf.house.gov

The Honorable James Peake  
Secretary  
Department of Veterans Affairs  
Washington DC 20405-0001

Dear Secretary Peake:

I was recently made aware of a troubling policy regarding your "Flexiplace" telework program for Department of Veterans Affairs employees. Specifically, I was notified that your current telework policy for attorneys with the Board of Veterans Appeals participating in Flexiplace requires the attorneys to complete an additional 14 "credits" (approximately 140 hours) of work than non-Flexiplace participants.

I would appreciate a report on the VA Flexiplace or other VA telework programs, and whether there are different requirements for those participating in telework compared with employees not participating in telework. If so, I would further request copies of your telework participation agreement forms and a justification regarding the appropriateness of requiring telework employees to complete additional work in exchange for telework participation.

As you may know, I have been a long-time and staunch supporter of telework or telecommuting. My legislation enacted in 2001 mandated a phased-in program to expand the number of federal employees who telework with the goal of giving every eligible federal employee this workplace option by the end of 2005. When it became clear that agencies were failing to adequately implement the 2001 law, I included provisions in both the FY 2005, FY 2006, and FY 2007 spending bills to withhold \$5 million from agencies which failed to meet the law. Ultimately, there is no excuse for discouraging telework participation -- either by slow implementation or disincentives, such as additional work requirements.

I look forward to your prompt response to my inquiry. Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136 with questions or for additional information regarding my concerns.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

FRW:tc

cc: Linda Springer, Office of Personnel Management

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA



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OPERATIONS**

**TRANSPORTATION-HUD**

**CO-CHAIR—CONGRESSIONAL  
HUMAN RIGHTS CAUCUS**

**Congress of the United States  
House of Representatives**

August 25, 2008

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Mr. Gordon Mansfield  
Deputy Secretary  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington DC 20420

Dear Mr. Mansfield:

Thank you for your prompt response to my letter to Secretary Peake following our conversation on August 5 regarding the flexiplace telework program. However, I remain deeply troubled by the department's position that telework is an "incentive" for managers, rather than a widespread option available to all eligible federal employees.

I firmly believe that requiring an additional 140 hours of work (10 credits) – the equivalent of three and a half weeks each year – for employees who telework is fundamentally wrong and counter to the spirit, if not letter, of the law. Current law allows managers to determine which positions are eligible for telework and requires that employees maintain a fully successful performance rating. It does not authorize managers to differentiate requirements for the same position based on whether the employee works in office or by telework.

In fact, Title V of the U.S. Code establishes "a basic administrative workweek of 40 hours for each full-time employee in his organization." Current flexiplace conditions would instead require that employees agree to an additional 2.7 hours per week over the 40-hour workweek for office workers in order to be eligible for telework. This appears to be inconsistent.

You also state that the additional credits required for flexiplace are designed to compensate for the hours that "office attorneys" spend mentoring new attorneys. If so, perhaps taxpayers should be equally troubled that "office attorneys" spend nearly one month of their year mentoring new attorneys – and that is before subtracting vacation and sick leave days. I also fail to understand why Flexiplace attorneys cannot mentor new attorneys using phone or videoconference technologies.

As the author of the telework law, I am convinced that current flexiplace requirements by your department constitute an arbitrary disincentive to telework, which has led to an under utilization of telework opportunities within the Board of Veterans Appeals and beyond. I have recently been contacted by other VA employees who have notified me of similar instances of extra work requirements in telework programs throughout the department.

Mr. Gordon Mansfield  
August 25, 2008  
Page 2

This pattern of disincentives to telework at the Department of Veterans Affairs is unfortunate and untenable. At a time of high energy costs and traffic congestion, as well as widespread telework adoption at other federal agencies, it is simply inexcusable that the VA would make telework less attractive or accessible to employees.

Since we last spoke, I was stunned to learn that out of your 233,000 employees; a mere 1,472 employees are currently eligible for telework – a meager 0.6 percent of your workforce.

Enclosed is a summary of the percentage of positions designated as eligible for telework in each federal agency that I had my staff prepare using OPM's data. You should be concerned that the average cabinet agency eligibility rate is 87.64 percent compared to your 0.6 percent.

Your department's efforts to limit telework are unacceptable. I will be asking the department's inspector general to review compliance with current telework law and OPM regulations both in regard to properly designating which positions are eligible for telework and the flexiplace program. I will also be contacting my colleagues on the House and Senate Veterans Affairs Committees and Appropriations Committees regarding this matter.

Should you wish to revise flexiplace requirements and reassess VA positions eligible for telework, I would be willing to assist in arranging meetings with federal agencies that have successfully adopted and implemented telework. Please do not hesitate to contact me or my staff member, Thomas Culligan, at 202-225-5136.

Best wishes.

Sincerely,

Frank R. Wolf  
Member of Congress

FRW:tc

### Telework Eligibility by Cabinet Agency

Agency	Population	# Eligible	% Eligible
Department of Agriculture	92250	74413	80.66%
Department of Commerce	34637	31089	89.76%
Department of Defense	679924	603265	88.73%
Department of Education	4152	4152	100.00%
Department of Energy	14902	13383	89.81%
Department of Health and Human Services	62104	56171	90.45%
Department of Homeland Security	141698	38861	27.43%
Department of Housing and Urban Development	8868	8069	90.99%
Department of Interior	74665	69188	92.66%
Department of Justice	108847	61448	56.45%
Department of Labor	15350	15032	97.93%
Department of State	11942	11942	100.00%
Department of Transportation	52119	51981	99.74%
Department of Treasury	106145	105413	99.31%
Environmental Protection Agency	17186	16912	98.41%
Office of National Drug Control Policy	110	110	100.00%
<b>Cabinet Agency Average</b>			<b>87.64%</b>

Agency	Population	# Eligible	% Eligible
USAID	1476	1466	99.32%
Fed Reserve Board of Governors	1880	1624	86.38%
Chemical Safety and Hazard Investigation Board	38	38	100.00%
Committee for Purchase from the Blind and Disabled	29	24	82.76%
Commodity Futures Trading Commission	450	443	98.44%
Consumer Product Safety Commission	403	353	87.59%
Corporation for National Service	561	549	97.86%
Court Services and Offender Supervision Agency	1158	844	72.88%
Defense Nuclear Facilities Safety Board	88	0	0.00%
Department of Agriculture	92250	74413	80.66%
Department of Commerce	34637	31089	89.76%
Department of Defense	679924	603265	88.73%
Department of Education	4152	4152	100.00%
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Department of State	11942	11942	100.00%
Department of Transportation	52119	51981	99.74%
Department of Treasury	106145	105413	99.31%
Department of Veterans Affairs	233151	1472	0.63%
Environmental Protection Agency	17186	16912	98.41%
Equal Employment Opportunity Commission	2200	1840	83.64%
Office of Science and Technology	50	38	76.00%
Export-Import Bank	376	376	100.00%
Farm Credit Administration	257	257	100.00%
Farm Credit Insurance Corporation	10	7	70.00%
Federal Communications Commission	1819	1816	99.84%
Federal Deposit Insurance Corporation	4570	4570	100.00%
Federal Election Commission	359	259	72.14%
Federal Energy Regulatory Commission	1304	1284	98.47%
Federal Housing Finance Board	132	130	98.48%
Federal Labor Relations Authority	134	113	84.33%

Federal Maritime Commission	124	124	100.00%
Federal Mediation and Conciliation Service	264	246	93.18%
Federal Trade Commission	1085	1085	100.00%
General Services Administration	12205	11190	91.68%
Institute of Museum and Library Services	57	54	94.74%
Inter-American Foundation	47	45	95.74%
International Boundary and Water Commission	240	100	41.67%
International Broadcasting Bureau	1743	1043	59.84%
Japan US Friendship Commission	4	4	100.00%
Marine Mammal Commission	10	10	100.00%
Merit Systems Protection Board	230	222	96.52%
National Aeronautics and Space Administration	18520	18520	100.00%
National Archives and Records Administration	3064	1300	42.43%
National Capital Planning Commission	45	45	100.00%
National Council on Disability	12	12	100.00%
National Credit Union Administration	949	361	38.04%
National Endowment for the Arts	159	159	100.00%
National Endowment for the Humanities	160	160	100.00%
National Labor Relations Board	1814	1646	90.74%
National Mediation Board	49	49	100.00%
National Science Foundation	1387	1377	99.28%
National Transportation Safety Board	385	383	99.48%
Nuclear Regulatory Commission	3555	3135	88.19%
Nuclear Waste Technical Review Board	15	15	100.00%
Occupational Safety and Health Review Commission	60	60	100.00%
Office of Federal Housing Enterprise Oversight	226	223	98.67%
Office of Government Ethics	80	58	72.50%
Office of National Drug Control Policy	110	110	100.00%
Office of Personnel Management	4725	2750	58.20%
Office of Special Counsel	105	102	97.14%
Overseas Private Investment Corporation	198	174	87.88%
Peace Corps	850	380	44.71%
Railroad Retirement Board	936	310	33.12%
Securities and Exchange Commission	3563	3563	100.00%
Selective Service Administration	4971	4971	100.00%
Smithsonian Institute	4004	2404	60.04%
Social Security Administration	63537	14870	23.40%

Trade and Development Agency	48	46	95.83%
U.S. Access Board	28	25	89.29%
U.S. Commission on Civil Rights	49	49	100.00%
U.S. Holocaust Memorial Museum	400	400	100.00%
U.S. International Trade Commission	357	241	67.51%
<b><u>Total Agency Eligibility Average</u></b>			<b><u>84.24%</u></b>



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

SEP 27 2008

The Honorable Frank R. Wolf  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Wolf:

I appreciated the opportunity to speak with you last week. I am writing in follow up to our conversation and your letter of August 25, 2008, in which you expressed your concern about the Department of Veterans Affairs (VA) Telework program. I share your concern and want to assure you that VA is committed to this program. Each of the three issues we discussed is important to me.

First, I do not and will not condone intimidation or retribution in the VA. Since our discussion Judge Jim Terry, BVA Chairman, has reiterated this policy informing all BVA employees of their right to voice legitimate workplace concerns without fear of reprisal as discussed in the Notification and Federal Employees Antidiscrimination Act (No Fear Act). The notifications were accomplished by September 24, 2008. In this process, Judge Terry did identify and take corrective action on what might be the case that was the source of your concern.

Second, I want to assure you that it is not VA policy to limit or discourage participation in the Telework program. I personally believe in and support this program. At the present time VA has 60,272 employees eligible for the Telework Program and 6,991 actually teleworking, an update to the figures you provided in your letter. To ensure we have appropriately identified all positions eligible for the Telework program, I have directed Deputy Secretary Mansfield to conduct a comprehensive review of all VA positions and provide me a report by October 30<sup>th</sup>. I will be happy to share with you the results of that assessment.

Third, appropriate management of a telework program is important. One should not have to work extra hours to realize the productivity increase that comes with the relief from the extra duties of those performing their duties in the office workplace. The unacceptably large backlog of claims demands efficiency and productivity among our highly qualified legal professionals. I have asked the Deputy Secretary, a lawyer himself, to work with Chairman Terry to insure fair, unambiguous metrics in managing this important program.

I appreciate your interest and your leadership in the Telework program and look forward to working with you.

*Thanks for  
raising  
issues!*

Sincerely yours,

James B. Peake, M.D.

**Department of  
Veterans Affairs**

**Memorandum**

Date: October 2, 2008

From: Flexiplace Oversight Group

Subj: Recommendations for changes to BVA's Flexiplace Program Plan

To: Chairman, Board of Veterans' Appeals (01)

1. The Flexiplace Oversight Group (FOG) met on October 2, 2008, to discuss and make a recommendation to the Chairman for an addendum to the Board's Flexiplace Program. The FOG discussed and voted on a proposal to restore parity between participants and non-participants in decision productivity requirements and to increase the maximum number of program participants from 88 to 100 attorneys. There was a unanimous agreement for both proposed recommendations.
2. The following FOG representatives were in attendance at the meeting:
  - Tresa Schlect, AFGE Representative
  - Steven Keller, Principal Deputy Vice Chairman
  - Michele Kane, Chief, VLJ, Decision Team 1
  - Kimberly Osborne, Chief, VLJ, Decision Team 2
  - Cheryl Mason, Chief, VLJ, Decision Team 3
  - Holly Moehlmann, Chief, VLJ, Decision Team 4
  - Carrie Johnson-Clark, Director, Management & Administration
  - Melva Gilchrist, Flexiplace Coordinator
3. The FOG request your approval for an addendum to the Board's Flexiplace Program to include the following changes:
  - Effective Evaluation Year starting October 1, 2008, decision productivity will be equivalent to the level required by the governing attorney performance plan, currently 156 credits per 12-month period.  
☒ **Approve**                      ☐ **Disapprove**
  - Effective with the start of the next 18-month Flexiplace Program cycle, (on or about January 5, 2009) the maximum number of program participants will be 100 attorneys.  
☒ **Approve**                      ☐ **Disapprove**

  
James P. Terry, Chairman